

ASSEMBLY BILL

No. 908

Introduced by Assembly Member Tom Berryhill

February 26, 2009

An act to amend Section 1203.1b of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 908, as introduced, Tom Berryhill. Probation.

Existing law establishes a procedure to by which a probation officer determines the ability of the defendant to pay all or a portion of the reasonable costs of any probation supervision or conditional sentence, as specified. Existing law also provides that if practicable, the court shall order or the probation officer shall set payments for those costs to be made on a monthly basis. Existing law further provides that execution may be issued on the payment order in the same manner as a judgment in a civil action, and that the order to pay all or part of the costs shall not be enforced by contempt.

This bill would require that the court order the payment of the described probation costs as a condition of probation, if probation is granted.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.1b of the Penal Code is amended
2 to read:

1 1203.1b. (a) In any case in which a defendant is convicted of
2 an offense and is the subject of any preplea or presentence
3 investigation and report, whether or not probation supervision is
4 ordered by the court, and in any case in which a defendant is
5 granted probation or given a conditional sentence, the probation
6 officer, or his or her authorized representative, taking into account
7 any amount that the defendant is ordered to pay in fines,
8 assessments, and restitution, shall make a determination of the
9 ability of the defendant to pay all or a portion of the reasonable
10 cost of any probation supervision or a conditional sentence, of
11 conducting any preplea investigation and preparing any preplea
12 report pursuant to Section 1203.7, of conducting any presentence
13 investigation and preparing any presentence report made pursuant
14 to Section 1203, and of processing a jurisdictional transfer pursuant
15 to Section 1203.9 or of processing a request for interstate compact
16 supervision pursuant to Sections 11175 to 11179, inclusive,
17 whichever applies. The reasonable cost of these services and of
18 probation supervision or a conditional sentence shall not exceed
19 the amount determined to be the actual average cost thereof. A
20 payment schedule for the reimbursement of the costs of preplea
21 or presentence investigations based on income shall be developed
22 by the probation department of each county and approved by the
23 presiding judge of the superior court. The court shall order the
24 defendant to appear before the probation officer, or his or her
25 authorized representative, to make an inquiry into the ability of
26 the defendant to pay all or a portion of these costs. The probation
27 officer, or his or her authorized representative, shall determine the
28 amount of payment and the manner in which the payments shall
29 be made to the county, based upon the defendant's ability to pay.
30 The probation officer shall inform the defendant that the defendant
31 is entitled to a hearing, that includes the right to counsel, in which
32 the court shall make a determination of the defendant's ability to
33 pay and the payment amount. The defendant must waive the right
34 to a determination by the court of his or her ability to pay and the
35 payment amount by a knowing and intelligent waiver.

36 (b) When the defendant fails to waive the right provided in
37 subdivision (a) to a determination by the court of his or her ability
38 to pay and the payment amount, the probation officer shall refer
39 the matter to the court for the scheduling of a hearing to determine
40 the amount of payment and the manner in which the payments

1 shall be made. The court shall order the defendant to pay the
2 reasonable costs if it determines that the defendant has the ability
3 to pay those costs based on the report of the probation officer, or
4 his or her authorized representative, *and shall make that order a*
5 *condition of probation, if probation is granted.* The following shall
6 apply to a hearing conducted pursuant to this subdivision:

7 (1) At the hearing, the defendant shall be entitled to have, but
8 shall not be limited to, the opportunity to be heard in person, to
9 present witnesses and other documentary evidence, and to confront
10 and cross-examine adverse witnesses, and to disclosure of the
11 evidence against the defendant, and a written statement of the
12 findings of the court or the probation officer, or his or her
13 authorized representative.

14 (2) At the hearing, if the court determines that the defendant
15 has the ability to pay all or part of the costs, the court shall set the
16 amount to be reimbursed and order the defendant to pay that sum
17 to the county in the manner in which the court believes reasonable
18 and compatible with the defendant's financial ability.

19 (3) At the hearing, in making a determination of whether a
20 defendant has the ability to pay, the court shall take into account
21 the amount of any fine imposed upon the defendant and any amount
22 the defendant has been ordered to pay in restitution.

23 (4) When the court determines that the defendant's ability to
24 pay is different from the determination of the probation officer,
25 the court shall state on the record the reason for its order.

26 (c) The court may hold additional hearings during the
27 probationary or conditional sentence period to review the
28 defendant's financial ability to pay the amount, and in the manner,
29 as set by the probation officer, or his or her authorized
30 representative, or as set by the court pursuant to this section.

31 (d) If practicable, the court shall order or the probation officer
32 shall set payments pursuant to subdivisions (a) and (b) to be made
33 on a monthly basis. Execution may be issued on the order issued
34 pursuant to this section in the same manner as a judgment in a civil
35 action. The order to pay all or part of the costs shall not be enforced
36 by contempt.

37 (e) The term "ability to pay" means the overall capability of the
38 defendant to reimburse the costs, or a portion of the costs, of
39 conducting the presentence investigation, preparing the preplea or
40 presentence report, processing a jurisdictional transfer pursuant to

1 Section 1203.9, processing requests for interstate compact
2 supervision pursuant to Sections 11175 to 11179, inclusive, and
3 probation supervision or conditional sentence, and shall include,
4 but shall not be limited to, the defendant's:

5 (1) Present financial position.

6 (2) Reasonably discernible future financial position. In no event
7 shall the court consider a period of more than one year from the
8 date of the hearing for purposes of determining reasonably
9 discernible future financial position.

10 (3) Likelihood that the defendant shall be able to obtain
11 employment within the one-year period from the date of the
12 hearing.

13 (4) Any other factor or factors that may bear upon the
14 defendant's financial capability to reimburse the county for the
15 costs.

16 (f) At any time during the pendency of the judgment rendered
17 according to the terms of this section, a defendant against whom
18 a judgment has been rendered may petition the probation officer
19 for a review of the defendant's financial ability to pay or the
20 rendering court to modify or vacate its previous judgment on the
21 grounds of a change of circumstances with regard to the
22 defendant's ability to pay the judgment. The probation officer and
23 the court shall advise the defendant of this right at the time of
24 rendering of the terms of probation or the judgment.

25 (g) All sums paid by a defendant pursuant to this section shall
26 be allocated for the operating expenses of the county probation
27 department.

28 (h) The board of supervisors in any county, by resolution, may
29 establish a fee for the processing of payments made in installments
30 to the probation department pursuant to this section, not to exceed
31 the administrative and clerical costs of the collection of those
32 installment payments as determined by the board of supervisors,
33 except that the fee shall not exceed fifty dollars (\$50).

34 (i) This section shall be operative in a county upon the adoption
35 of an ordinance to that effect by the board of supervisors.